

JUDGE JONES

12 CIV 6623

**DUANE MORRIS LLP**

By: Sheila Raftery Wiggins

1540 Broadway

New York, NY 10036

(973) 424-2055 (tel)

(973) 556-1486 (fax)

srwiggins@duanemorris.com

*Attorneys for Defendant*

Cellco Partnership d/b/a Verizon Wireless

(improperly named as Verizon Wireless)



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

CHEIKHOU SOW,

Plaintiff,

v.

VERIZON WIRELESS,

Defendant.

Civil Action No.:

**NOTICE OF REMOVAL**

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**PLEASE TAKE NOTICE** that, in accordance with 28 U.S.C. §§ 1331, 1441 and 1446, and all other applicable law, defendant Cellco Partnership d/b/a Verizon Wireless (improperly named as Verizon Wireless) ("Verizon Wireless") through its attorneys, Duane Morris LLP, hereby gives notice of the removal of this action, Index No. 12103344, pending in the Supreme Court of the State of New York, New York County. In support of removal, Verizon Wireless states as follows:

1. On or about July 23, 2012, Plaintiff Cheikhou Sow ("Plaintiff") commenced a civil action by filing a Complaint (the "Complaint") in the Supreme Court of the State of New

York, New York County, Index No. 12103344, entitled *Cheikhov Sow v. Verizon Wireless*. Attached hereto as Exhibit "1" is a true and correct copy of Plaintiff's Summons and Complaint.

2. Plaintiff sent via U.S. mail a copy of the Summons and Complaint to Verizon Wireless, and the envelope is postmarked with a date of July 26, 2012. Verizon Wireless received copies of the Summons and Complaint by U.S. mail on July 31, 2012.

3. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because it has been filed within thirty (30) days of Verizon Wireless' receipt of the Summons and Complaint.

4. Plaintiff's Complaint demands against Verizon Wireless a judgment in the amount of \$100,000.00.

5. The Supreme Court of the State of New York, New York County, is located in the Southern District of New York.

6. As required by 28 U.S.C. § 1446(a), a copy of all process and pleadings served upon Verizon Wireless are provided with these papers.

#### **FEDERAL QUESTION JURISDICTION**

7. Removal of this action to this Court is appropriate because this Court has original jurisdiction over the action pursuant to 28 U.S.C. § 1331.

8. In the Complaint at Paragraph 11, Plaintiff alleged, *inter alia*, that Verizon Wireless placed an invalid debt on Plaintiff's credit report. Thus, viewing the Complaint in a light most favorable to Plaintiff, the Complaint alleges damage to his credit history, which concerns an alleged violation of a federal statute, the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* ("FCRA").

9. Therefore, this Court has jurisdiction pursuant to 28 U.S.C. § 1331 because at least one of Plaintiff's claims arises "under the Constitution, laws, or treaties of the United States."

### REMOVAL

10. This action is one over which the Court has original jurisdiction pursuant to 28 U.S.C. § 1331. Therefore, Verizon Wireless may remove this action to this Court pursuant to 28 U.S.C. § 1441(b) which provides that "[a]ny civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regards to the citizenship or residence of the parties." 28 U.S.C. § 1441(b).

11. Pursuant to 28 U.S.C. § 1367(a), insofar as the Complaint may contain any non-federal claims, such claims may also be removed to this Court because they "are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." Accordingly, this Court may determine all claims in the Complaint.

12. The Summons and Complaint were originally filed in the Supreme Court of the State of New York, New York County. Venue properly lies with this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(b) because the Supreme Court of the State of New York, New York County, is located within the Southern District of New York.

13. This Notice of Removal is filed in the United States District Court for the Southern District of New York within the time allowed by law for removal of civil actions, that is, within thirty days after Verizon Wireless was served with, or otherwise received, the Summons and Complaint.

14. The filing of this Notice of Removal and the removal of this action to this Court does not constitute a waiver of any of Verizon Wireless' rights or available defenses, and Verizon Wireless expressly reserves the right to assert all such defenses at a later time.

15. In compliance with 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Supreme Court of the State of New York, New York County, and is being served on Plaintiff.

16. As set forth herein, this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This action is properly removed pursuant to 28 U.S.C. §§ 1441 and 1446.

### **CONCLUSION**

WHEREFORE, defendant Cellco Partnership d/b/a Verizon Wireless (improperly named as Verizon Wireless) respectfully requests that this Notice of Removal be filed and, accordingly, that this action, Index No. 12103344, currently pending in the Supreme Court of the State of New York, New York County, be removed to and proceed in this Court.

Dated: August 29, 2012

**DUANE MORRIS LLP**

A DELAWARE LIMITED LIABILITY PARTNERSHIP



By: Sheila Raftery Wiggins

1540 Broadway

New York, NY 10036

(973) 424-2055 (tel)

(973) 556-1486 (fax)

*Attorneys for Defendant*

Cellco Partnership d/b/a/ Verizon Wireless  
(improperly named as Verizon Wireless)

# EXHIBIT

[Print in black ink all areas in bold letters. Both pages must be completed. This summons cannot be used for divorce actions.]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

SUMMONS WITH NOTICE

Index-Number 12103344

CHEIKHO SOW  
[your name(s)] Plaintiff(s)

- against -

VERIZON WIRELESS

[name(s) of party being sued] Defendant(s)

Date Index Number  
purchased NEW YORK, 2012  
COUNTY CLERK'S OFFICE

JUL 23 2012

NOT COMPARED  
WITH COPY FILE

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to appear in this action by serving a notice of appearance on the plaintiff(s) at the address set forth below, and to do so within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer or appear, a judgment will be entered against you by default for the relief demanded below.

Dated: 07-23, 2012  
[date of summons]

ch. S. SOW  
[sign your name(s)]

CHEIKHO SOW  
[print your name(s)]

457 WEST 125<sup>th</sup> ST # 5A  
NEW YORK, NY 10027  
917-693-1322  
[your address(es), telephone number(s)]

Defendant(s) VERIZON WIRELESS  
180 Washington Valley Rd  
Bedminster, NJ 07921

[address(es) of party being sued]

Notice: The nature of this action is [briefly describe the nature of your case against the defendant(s), such as, breach of contract, negligence]:

VERIZON WIRELESS without my authorization allowed someone I do not know to ever to open an account and run-up bills in my name. Someone who stole my identity

The relief sought is [briefly describe the kind of relief you are asking for, such as, money damages of \$25,000]

I am asking for money damages of \$100,000.

Should defendant(s) fail to appear herein, judgment will be entered by default for the sum of \$100,000 [amount of money demanded], with interest from the date of July, 2012 [date from which interest on the amount demanded is claimed] and the costs of this action.

Venue:

Plaintiff(s) designate New York County as the place of trial. The basis of this designation is check box that applies]:

- ☒ Plaintiff(s) residence in New York County
- ☐ Defendant(s) residence in New York County
- ☐ Other [See CPLR Article 5]: \_\_\_\_\_

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Index No. 12103344/20

CHEIKHOU SOW

Plaintiff,

-Against-

COMPLAINT

VERIZON WIRELESS

Defendant,

X

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The complaint of the plaintiff Cheikhon Sow, respectfully shows and alleges as follows:

The plaintiff herein, Cheikhon Sow, is a resident of ~~the~~ Valley 457 West 125<sup>th</sup>, apt #5A, New York, NY 10027.

The plaintiff is a self-employed taxi driver. The defendant is a wireless phone service corporation.

The plaintiff has a Contract with the corporation.

The plaintiff phone account with the defendant was opened in the year 2002.



5. The plaintiff is the sole person running the account for the past 10 yrs.

6. The plaintiff has not added any person's name to the phone account that was opened with the defendant.

7. The defendant has allowed someone to use my identity and information to open an account in Washington DC.

8. That unauthorized person has run-up bills in the plaintiff's name without his authorization or knowledge.

9. The plaintiff had no knowledge of this event until 2006.

10. The plaintiff protested to Verizon, but the defendant did not agree to the plaintiff's demand.

11. The defendant went ahead and

assigned the alleged debt to debt collection companies. The defendant also posted this unfavorable information the plaintiff's credit history.

12. By reason of the facts and circumstances stated above, defendant has breached contract.

13. By reason of the facts and circumstances stated above, Plaintiff has been damaged by the defendant in the sum of \$100,000.

Wherefore, the plaintiff demands judgment in the sum of \$100,000, costs, & disbursements, together with any other relief the court finds to be just and proper.

Dated: 07-19-12

Chuk Sow  
Plaintiff

VERIFICATION

Chuk Sow, being duly sworn, deposes and says:

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on the information and belief and as to those matters I believe them to be true.

Chuk Sow  
Signature

Chuk Sow  
Print Name

Sworn to before me this  
19<sup>th</sup> day of July 20 12

[Signature]  
Notary Public

SYLVESTER O. BOATENG  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02806256329  
Qualified in Bronx County  
My Commission Expires 02/21/2016